

A-E CONTRACTING BULLETIN 96-09, 10 OCT 96

SUBJECT: A-E INDEFINITE DELIVERY CONTRACT (IDC) WAIVERS

1. The rules on A-E IDCs have completely changed (see Bulletin 96-01). The field has a lot more authority (and responsibility!) than before. Based on the questions I have been receiving, there is some confusion about waivers. Let's go over this subject. Refer to EFARS 36.601-3-90(j) thru (n). Note: The new EFARS rules do not change IDCs awarded under the old rules.

2. To exceed \$1 M/contract period or more than two option periods, a waiver must be obtained prior to the closing date of the CBD announcement. (We now use "contract period" instead of "year".) Divisions may approve a waiver up to \$2 M/contract period but may not increase the number of option periods. (Previously, Divisions had no waiver authority.) The PARC's Office at HQUSACE may approve waivers for over \$2 M/contract period and/or for more than two option periods. A waiver must contain strong quantitative information on anticipated requirements. If a waiver is obtained after the CBD announcement is published but before the closing date, the announcement must be revised to reflect the proper terms.

3. To revise the monetary limits or number of option periods after the CBD closing date (usually after contract award), the Justification and Approval (J&A) process must be followed. Refer to FAR 6.3. A J&A authorizes other than full and open competition. When you give the A-E more work than stated in the CBD, that's a non-competitive action. FAR 6.302-1 (only one responsible source and no other supplies or services will satisfy agency requirements) and FAR 6.302-2 (unusual and compelling urgency) are the most pertinent authorities. EFARS 6.304(a)(1) delegates J&A approval authority.

4. A district chief of contracting can approve a J&A up to \$500K, a division director of contracting up to \$10M, and the PARC up to \$50M. Hence, the only IDC "waivers" after the CBD closing date that would come to HQUSACE are over \$10M (very rare). Also, forget the old EFARS rule that the contracting officer could approve waivers up to \$200,000. See your contracting office for complete guidance on J&A's. J&A's are not to be treated lightly!

5. Let's look at some quick examples:

a. You have an "old" IDC with the \$150K order limit, but need to do a \$250K order. Then the chief of contracting may approve a J&A for a \$100K increase in the limit for that order only. Remember: The new EFARS limits do not change "old" IDCs.

b. You have an "old" IDC and need to do an order than will cause the annual limit to be exceeded. Then it takes a J&A. If you have a "new" IDC, you may award the next option period (if there is one) and issue the order; no waiver nor J&A is required to award an option period "early".

c. You have an "old" or "new" IDC and want to add another option year (period), beyond that stated in the CBD and contract. You need a J&A for the dollar amount of the option year (period). If over \$500K, Division approval is required.

6. Oops! I misnumbered the third bulletin on CADD Costs. It should be 96-03, not 96-01.

DON EVICK, HQUSACE, CEMP-ES
A-E CONTRACTING PROGRAM MANAGER
PHONE: 202-761-1053, FAX: 202-761-1649